IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7026 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GSRTC

Versus

MOTIJI NATHAJI THAKORE SINCE DECEASED THROUGH HEIRS

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Appearance:

MR HS MUNSHAW for Petitioner

MR MUKESH H RATHOD for Respondent No. 1

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CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 13/06/2000

ORAL JUDGEMENT

Rule. Learned counsel Mr. Upadhyaya for Mr. Mukesh Rathod, learned counsel for the respondents waives service of rule.

2. Late Shri. Motiji Nathaji Thakore was engaged as an Off-day Reliever Watchman under Gujarat State Road Transport corporation and he worked in that capacity from 1982 to 1986. It is not in dispute that he worked less than 240 days in all these years. However the Corporation dispensed with the services of late Shri. Motiji Nathaji Thakore from his post of Off-day reliever watchman in 1986. Having felt aggrieved by this action of the Corporation, late Shri. Thakore made a Reference to the Labour Court at Ahmedabad, which has been registered as Reference (LCA) 117/88. The Labour Court after hearing the parties by an order dated 22-1-1999 directed for payment of full backwages from the date of termination of his service till his date of death, that is 1-1-1999. The Labour Court did not pass the order for reinstatement in view of the fact that Shri. Thakore died before the judgment was delivered by the Labour Court.

3. Having felt aggrieved by the judgment & award by the Labour Court, the Corporation has filed the present petition for quashing the order of the Labour Court. Mr. H.S. Munsha, learned counsel appearing on behalf of the petitioner submitted that, in the present petition the heirs of Shri. Thakore has been made parties as he died on 1-1-1999. It is submitted by learned counsel for the petitioner that the Labour Court did not take into consideration the fact that late Shri. Thakore was a registered porter in Dholka bus stand of Corporation and licence was issued by the Corporation authorising Shri. Thakore to work as porter in the said bus stand. Since the services of Shri. Thakore was available as porter he was selected by the Corporation to work as off-day reliever watchman and accordingly from year 1982 to 1986 he was engaged to work as off-day reliever watchman on different dates. It is also submitted by learned counsel for the petitioner that, he was never engaged for 240 days in any year between the period 1982 and 1986. This fact also has not been challenged by learned counsel for the respondents. Learned counsel for the petitioner accordingly submitted that even the Labour Court has come to the conclusion that deceased Shri. Thakore had never worked for 240 days in any calendar year between 1982 and 1986. However the Labour Court having regard to the provisions of Section 25-G and 25-H of the Industrial Disputes Act awarded full backwages from the date of his termination till date of his death. Learned counsel for the petitioner submitted that since regular watchman is available with the Corporation , the engagement of Shri. Thakore was discontinued. Learned counsel accordingly submitted that deceased Thakore was engaged as Off-day

Receiver Watchman and he was not a regular staff of the Corporation, and therefore, there is no question of his retrenchment. It is also submitted that deceased Thakore was a licenced porter and on the date on which he was not engaged as Off-day reliever watchman, he was discharging his duties as porter in the bus stand. Learned counsel consequently submitted that Labour Court committed an error in deciding deceased Shri. Thakore was a workman under the Corporation and he was illegally retrenched and therefore entitled to full backwages. Mr. Upadhyay learned counsel for Mr. Rathod submitted that eventhough deceased Thakore did not perform 240 days in any year between 1982-1986 but he was discharging the duties of watchman under the Corporation and when regular watchman was recruited by the Corporation the case of deceased Thakore was not considered and therefore he is entitled to the backwages as per provisions of Section 25-G and 25-H of the Industrial Disputes Act. It is an admitted fact that Shri. Thakore died on 1-1-1999. It is also submitted by Mr. Upadhyay that the Labour Court has considered the evidence adduced in the case and after considering the evidence adduced by the parties, and after hearing the counsel, Labour Court has come to a definite conclusion that deceased Thakore was a workman under the Corporation, and there is no reason for this Court to interfere with the finding of fact of the Labour Court.

4. I have gone through the judgment & order passed by Labour Court. It appears that the Labour Court has given sufficient reason for coming to the conclusion that deceased Thakore was a workman under the Corporation and I do not find any reason to interfere with the finding of the Labour Court. However it appears from Annexure-D and from Ground No. 4 (ii) of the petition that deceased Thakore worked for 207 days in year 1982, 130 days in year 1983, 189 days in year 1984, 159 days in year 1985 and 52 days in year 1986; and thereafter he has not been engaged by the Corporation as Off-day Reliever Watchman. The Labour Court has awarded full backwages to the deceased Thakore. From annexure-D it appears that the deceased workman did not work on all the days during the year 1982 to 1986 but on different days he worked as Off-day Reliever Watchman. If the average of all these years are taken then it would appear that he had worked 40 % of the days in a year. Therefore I am of the view that the Labour Court has committed an error in allowing full backwages to deceased Thakore. Even if he continued as Off-day reliever watchman, he would not have got work for all the days in the year and I am of the view that payment of 40 % of the backwages would be just & proper

backwages for the deceased Thakore. Accordingly the order of the Labour Court is modified to the extent that deceased Shri. Thakore be paid backwages from the date of his retrenchment till the date of his death at the rate of 40 % of his full backwages. With the aforesaid modification of the order of the Labour Court this writ petition is partly allowed. I make no order as to costs. The Corporation is directed to make payment to the legal heirs of deceased Shri.Motiji Nathaji Thakore preferably within six weeks from the date of receipt of this order. Rule made absolute to the aforesaid extent. Direct service permitted.

Dt: 13-6-2000

( P.K. Sarkar, J )

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